

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15955 of Susan Elizabeth Spence, pursuant to 11 DCMR 3107.2, for a variance from the lot occupancy requirements (Subsection 403.2) for a deck addition to a single-family row house in an R-3 District at premises 4421 17th Street, N.W. (Square 2650, Lot 25).

HEARING DATE: June 15, 1994

DECISION DATES: July 6, September 7 and 28, 1994

ORDER

SUMMARY OF EVIDENCE:

The property which is the subject of this application is located at 4421 17th Street, N.W. It is zoned R-3. The site is 22 feet wide and 99 feet deep. It contains 2,178 square feet of land area. The property is developed with a single-family row house with two stories and a basement. It was constructed in 1921 and contains 3,057 square feet of living space. A 15-foot wide public alley abuts the rear, or eastern portion of the site.

The R-3 District in which the property is located permits matter of right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2,000 square feet, a minimum lot width of 20 feet, a maximum lot occupancy of 60 percent, and a maximum height of 3 stories/40 feet. The applicant is requesting a variance from the lot occupancy provisions to allow the construction of a deck at the rear of the dwelling. The deck would be located one-story above grade. It would measure 10 feet wide by 10 feet deep above the existing garage opening on the southern portion of the house and 12 feet wide by 4 feet deep above the existing alcove. The existing rear door and window on the first floor would be replaced and this portion of the structure would be reconfigured. New stairs would be constructed to provide access to the deck.

The maximum lot occupancy permitted on the subject lot is 60 percent or 1,306.8 square feet. Currently, the dwelling unit occupies approximately 59 percent of the land area. The dwelling and the proposed addition would occupy 1,424 square feet. Therefore, the applicant is seeking an area variance for 117.2 square feet.

Issues and Arguments:

1. Whether the deck is located at the same level as the main floor of the house?

The plans submitted into the record indicate that the deck will be located one inch lower than the main floor of the house. The applicant's architect pointed out that the proposed deck should not be included in the building area of the structure because the definition of "building area" in the Zoning Regulations does not "include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or buildings on adjoining property." The architect maintains that the deck is to be below the main level of the house and it will not block light or ventilation to the applicant's structure or her neighbors' homes.

To determine the Zoning Administrator's interpretation of the building area provision as it relates to the subject property, the Board requested that the Zoning Administrator (ZA) submit a memorandum to clarify his handling of this application.

In a memorandum dated September 13, 1994, the ZA stated:

The definition of "Building Area" was used in computations for the proposed deck due to the fact the deck is to be constructed at the same level as the main floor. It has been our continued practice, in the Zoning Division, that a deck below the level of the main floor will not be included in the "building area". Also, it has been our practice that if a deck is to be constructed at or above the level of the main floor, it will be charged in "building area".

The applicant submitted a letter dated September 22, 1994 in response to the ZA's memorandum. In this letter, the applicant maintained that the law is being interpreted narrowly and that the deck cannot be built below the main level of her house because of the location of her garage and basement. She urged the Board to interpret the laws more leniently because they were not written to govern her deck. Her deck should not be treated like an addition to the house.

2. Whether the owner is faced with a unique or exceptional situation or condition related to the property that would create a practical difficulty for her in complying with the Zoning Regulations?

The applicant argued that while a matter of right deck would be allowed if built no more than four feet above grade, she cannot construct a deck below the main level of her house because it would block the entrance to her garage. It would also block the light and ventilation to her basement located in the alcove area at the rear of her house.

She testified that many of her neighbors have decks and her house is unique because she does not. She stated that she can access the rear yard through a door at the rear of her house.

By memorandum dated June 3, 1994, the Office of Planning (OP) recommended denial of the application. On the issue of uniqueness and practical difficulty, OP stated that most of the lots that front on 17th Street, between Allison and Webster Streets, are similar in size and configuration. Generally, the lots are rectangular in shape, 99 feet deep by 22 feet wide, and each has a lot size of 2,178 square feet. Additionally, the layouts of most of the dwelling units are similar. OP stated that it has been unable to find any unique or exceptional conditions related to the property that would prevent its reasonable use.

3. Whether approval of the deck would be of substantial detriment to the public good?

The applicant stated that the proposed deck would not obstruct anyone's view or air. She also noted that her neighbors submitted letters in support of the application.

The Office of Planning was of the opinion that there would be minimal adverse impacts resulting from the construction of the proposed deck. OP stated that one deck is located on the adjacent property to the south. OP noted that many decks have been constructed in Square 2650 generally, and in the 4400 block of 17th Street, N.W. OP stated that, while some of the decks may have been constructed as a matter of right, it is apparent that many of the decks would have required variance relief. Yet, based on information contained in the files of the Office of Zoning, the Board has not approved variance relief for any property that is located in Square 2650.

Advisory Neighborhood Commission (ANC) 4A submitted a letter dated June 13, 1994, expressing support for the application. However, no basis was provided for that support.

No one from the community appeared at the hearing to testified about the application.

4. Whether approval of the variance would impair the intent, purpose and integrity of the zone plan?

The Office of Planning stated that currently the property meets all of the zoning requirements except for lot occupancy. The lot area, lot width and rear yard provisions are all met.

If the proposed deck is constructed, this conforming structure would become nonconforming. If each property owner residing in the R-3 District of the Crestwood neighborhood were permitted to occupy

more than 60 percent of his or her land, development of the area would be more dense than is currently permitted. Thus, the intent, purpose, and integrity of the Zoning Regulations and Map would be impaired.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The ZA's view is that the deck would be built at the same level as the main floor of the applicant's house. Therefore, it was included as part of the building area for determining lot occupancy. Consequently, this application is properly before this Board for variance relief.

2. The applicant's property is similar in configuration to other nearby properties. The applicant's garage is not unique because other houses have garages at the rear of the house. The fact that others have decks and the applicant does not, is not an exceptional condition inherent in the applicant's property because the neighbors' decks were not originally part of their structures and could be illegally constructed.

3. The applicant's rear yard is accessible from the rear of her house. Therefore, she does not suffer a practical difficulty by not being able to construct a deck.

4. The proposed deck would not obstruct light or ventilation of the subject structure or other nearby properties.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing, findings of fact and evidence of record, the Board concludes that the applicant is seeking an area variance to allow the construction of a rear deck addition at property located in an R-3 District. Granting such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board concludes that there is nothing unique or exceptional inherent in the applicant's property which creates a practical difficulty for her in making reasonable use of her property.

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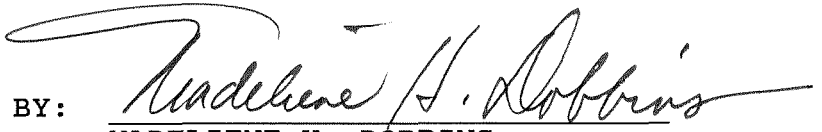
The Board concludes that while the proposed deck would not be of substantial detriment to the public good, granting the application would impair the intent, purpose and integrity of the zone plan.

In light of the foregoing, the Board concludes that the application is hereby **DENIED**.

VOTE: 3-0 (Angel F. Clarens, Craig Ellis and Laura M. Richards to deny; William J. Ensign not present, not voting; Susan Morgan Hinton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
MADELIENE H. DOBBINS  
Director

FINAL DATE OF ORDER:

DEC 27 1995

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15955

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on DEC 27 1995 a copy of the order entered on that date in this matter was mailed certified, postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Susan Elizabeth Spence  
4421 17th Street, N.W.  
Washington, D.C. 20011

Donald Trageser  
1730 Bonifant Road  
Silver Spring, Maryland 20906

Mr. Joseph H. Hairston, Chairperson  
Advisory Neighborhood Commission 4A  
7600 Georgia Avenue, Suite 405  
Washington, D.C. 20012

Ms. Audrey J. Hendricks, Chairperson  
Advisory Neighborhood Commission, 4C  
4020 8th Street, N.W.  
Washington, D.C. 20011

A handwritten signature in cursive script, reading "Madeline H. Dobbins". The signature is written in dark ink and is positioned above the printed name and title of the Director.

MADELIENE H. DOBBINS  
Director

Date: DEC 27 1995